

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JANUARY 23, 2009
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Member Tim Johns called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Jerry Edlao
Ron Agor

Timothy Johns
Samuel Gon III
Taryn Schuman

STAFF

Morris Atta, LD
Sam Lemmo, OCCL
Dan Polhemus, DAR

Charlene Unoki, LD
Eric Hirano, ENG

OTHERS

Colin Lau, Deputy Attorney General
Jodi Hashimoto-Omi, D-1
Laulani Tiore, D-1
Bruce Lum, D-1
Marti Townsend, F-1

Junedale Hashimoto, D-1
Haunani Pacheco, D-1
Camille Kalama, D-1
Tim Lui-Kwan, K-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1 Amended December 12, 2008 Minutes, Item C-6.

Amended minutes were distributed prior to today's meeting.

Member Schuman recused herself.

Approved as amended (Agor, Edlao)

Item A-2 January 9, 2009 Minutes.

Member Agor recused himself.

Unanimously approved as submitted (Edlao, Schuman)

Item D-1 Re-Submittal Forfeiture of Revocable Permit No. S-6040, John K. Hashimoto and Junedale U. Hashimoto, Permittee, Anini, Hanalei, Kauai, TMK: (4) 5-3-07:5.

Morris Atta representing Land Division reported on history and situation background.

There was some discussion about the forfeiture amount.

Junedale Hashimoto introduced herself and her sister, Jodi Hashimoto-Omi, explaining that she was never notified that she was no longer a permittee and her family requested to do something to bring this current.

9:08 am Chairperson Thielen arrived.

Junedale Hashimoto admitted to being at fault.

Jodi Hashimoto-Omi explained that when this came before the Board at a previous Board meeting her family felt they didn't have any alternative but to accept the increase in rent to \$3556. They were advised later that if they had accepted the initial rent of \$1200 then there wouldn't have been such a large increase and they we're past the statute of limitation to make an appeal. Her family didn't know what the statutes were whether they had time to appeal because no one told them if they weren't in agreement what the process was. Ms. Hashimoto's dad was battling leukemia when the rent increase came up which went on hold and it didn't come up until 2004. Her family considers this property a sense of place, not money investment, and they did everything to comply with the rent. The family sought help where a public auction was suggested, but their family can't compete. It was suggested to turn this parcel over to the County to create it as a park and allow her sister to be the caretaker. The family is at a disadvantage and they can't pay the increase of \$3556.

Haunani Pacheco, Jundale's cousin, said she understood the reasons for the recommendation reporting the circumstances involving Land Division staff and the incremental increases over the years. Land owners are renting their homes presenting photos of homes in the area. Jundale Hashimoto is restricted from having a vacation rental nor allowed to build another house due to the 30 day revocable permit and because of the threat of eviction. Ms. Pacheco described her family's history to the property

having tried to purchase it twice at fair market value; Junedale Hashimoto had to sell her car, stop phone service, and exhausted every means to keep the property.

Laulani Tiore representing the Peacemaking Project for the Native Hawaiian Legal Corporation and Native Hawaiian Bar Association introduced Camille Kalama, Staff Attorney for Native Hawaiian Legal Corporation, said the Hashimoto family is with their Peacemaking Project and there is no client/attorney relationship, but the goal is to find solutions that work for everyone. Ms. Tiore reported working with clients who had 999 year homestead leases that were revoked in 1982.

Bruce Lum, Haunani Pacheco's brother, gave some family history to the parcel. An attorney, Michael Lum, and DLNR allowed the family to live there. Mr. Lum reiterated about the vacation rentals near their property and that the family home was assessed \$800 per room. The lease was set up for people to settle on the land not to speculate.

Member Johns said through the 1982 court action the 999 year lease was terminated. Mr. Lum said that the court action was pulled out at the special sale and he wondered why it didn't revert back to the 999 year lease when the sale didn't happen. Member Johns said that the Board doesn't have the authority to revert to a 999 year lease because the court intervened and cut that out. DLNR recognized the reasons for the 999 year lease because 25 years later the Hashimotos are still on the land at a favorable price in respect for the 999 year lease although the court had terminated it. Ms. Tiore agreed. There was negotiation over a reasonable price taking into account that the Hashimotos were living a sustenance lifestyle and couldn't afford the rent during the revocable permit period. During 1982, the sale happened during the time of the Hashimotos' grandmother's death.

Chair Thielen said that this Board can't change what the court did in 1982 and should look at what is happening now.

Ms. Kalama reiterated the special sale agreement with the family and the 1982 court probate action. DLNR went to probate and said remove that property from the lessee's estate because she is no longer there (passed away) and can't make the payments. Court said it's no longer part of her estate.

Member Johns asked why was it revoked. Ms. Kalama replied DLNR said that Junedale Hashimoto didn't make payments according to the schedule under the 999 yr. lease special sale. The lessee at the time was on welfare, at the hospital, and didn't have assets to pay for it.

Member Johns asked what does your client want. Ms. Tiore said no eviction until a thorough review is done with their office and the Office of Hawaiian Affairs (OHA) which is being done to all 999 year leases; ask for DLNR's participation in the process, and to have reasonable rent. When the special sale was instituted it was for \$50,000 per quarter to a Hawaiian family with a subsistence lifestyle which the family can't afford.

Member Johns asked whether OHA is ok because they get a percentage of this. It isn't about DLNR wanting to be the private landowner and kicking out Hawaiian families. DLNR are trustees for all the resources that they protect and DLNR gives money to OHA for all those lands that DLNR manages. The Hashimotos is asking the Department to subsidize even though they lost the 999 year lease at the cost of everything else they are looking at under the Department. Ms. Tiore said she understood. The Hashimotos scheduled a meeting with OHA.

Member Johns said Ms. Tiore wants to sweep the Hashimoto's into the 999 year lease review. Being caretaker of the park was another attempt by the County and State to resolve this, but the Hashimotos refused. Was there rent associated with that? Ms. Tiore said she didn't believe the Hashimotos refused because they spoke to Nina Morita, Ezira Kanoho and Mayor Bryan Baptiste who suggested that they consider that. The Hashimotos felt a park shouldn't be the primary or best choice avenue to be pursued.

Member Johns said that the Hashimotos want to stay on the land with reduced rent or for free or should the Board just give it to them. Ms. Tiore said that would be wonderful. The Board should do something to take everything into consideration including DLNR's responsibility to manage the land. She pointed out on the map that this land is at the mouth of the river where there was taro cultivation; the family is the caretaker maintaining the land for many years before the issuance of the lease. The family has cultural and historical value to this land and would be lost if they are removed. Ms. Tiore asked for a holding pattern that is reasonable.

Ms. Kalama noted that there are 50 or so 999 year leases left, but the Hashimotos are not one of them. Member Thielen said this is no longer a 999 year lease. The Board cannot revisit it today and can only act on the agenda issued.

Member Agor asked whether the Board could make recommendations on the reduction. Mr. Atta said there has been no analysis or discussion on a reduction which was based on the appraisal process on statute and was not challenged at the time. The Board could revisit the rent issue on RPs and doesn't know of any restrictions.

There was some discussion whether adjacent property rents were equivalent to one another which was assumed they are by the Hashimotos' comments on vacation rentals and that the state is seeing a trend in higher shoreline property values.

Charlene Unoki from Land Division said that the land was \$886,900. Staff did a 4% rate of return and it came out to \$2,956 per month for the land. Because the house belongs to the State staff charged a residential rate of \$600 with a total of \$3556. Chair Thielen asked what was the rent before which was \$500 prior to 2004. There was some discussion about when the Hashimotos made payment.

Member Agor made a motion to re-set the monthly rent and to make a requirement for the lessee to get up to date, make it retro, and have the Hashimotos within 30 days get caught up with the actual rent, and set a rent for a period of 10 years, and get reviewed

after that. Chair Thielen seconded it. Member Johns asked whether the Board could waive the rent.

Deputy Attorney General Colin Lau said there is a sunshine problem because we're talking about rent rather than forfeiture and within the terms of 171-55 it says "to set conditions and rent to serve the best interest of the State." There is no discussion about that within the submittal or agenda item. Member Johns said if we want to do that we might have to defer.

There was some discussion regarding having some staff analysis on the revocable permit because setting it for 10 years might have legal restrictions. What the expectations are with a deferral because unsure whether the rent can be retroactive and what those requirements might be which should be discussed with the tenants. More discussion on whether or not the tenants could come current with the past due rent, whether reducing the rent amount is feasible, and if not retroactively then the Board would come up with a payment period. If there is enough information the tenants will sit with staff, after staff researches what the law permits they will come back with an alternative recommendation.

Member Johns said he was inclined to support a re-evaluation of the lease rent under the circumstances because when he first read the submittal, for whatever reason, people can't afford to pay for their use of public resources which is what is going on here. But, in this particular case because of the history he thought it might be appropriate to re-examine the rent going forward and was willing to look at it, but he doesn't know whether to go to \$500 because of the restrictions of statute and whether the Board would need analysis supporting that. And, he doesn't know whether the Board can waive past rents and would need to work it out, possibly do a new rent set, but the Board doesn't have the support for that and would like staff to analyze it and come back at a later date. It would have to be quick because it needs to be resolved. Member Edlao agreed with him by deferring for 60 days to come up with a balance and in the meantime have staff look at the RP and rent and come back to the Board.

Member Gon referred to the conditions in rent that would serve the best interest of the State and whether the value was tangible or not of kama'aina families remaining on coastal properties versus seeing all of Hawaii's coastal lands go to people who have no connection with those properties and that is a cultural and historical value to the resources which the Department protects in terms of Hawaiian sense of place.

Member Agor withdrew his motion and Chair Thielen withdrew seconding it.

Member Edlao made a motion to approve this giving the tenants 60 days to come up with some kind of payment plan for back rent and have staff take a second look at the RP and possible re-arranging or reduction of the rent for the future. Member Johns seconded it and said he doubt that the Hashimotos could pay all the back rent within 60 days, but they might agree to a payment schedule. Member Edlao agreed. Chair Thielen agreed with

Member Johns by putting urgency on people to work this through to come up with an alternate specific plan. Member Agor seconded it.

The Board:

Approved and amended staff's recommendation by deferring forfeiture for 60 days for staff to work with the tenant on a realistic payment plan (schedule). Staff is to research the possibility of reducing the rent prospectively.

Unanimously approved as amended (Edlao, Gon)

**Item K-1 Time Extension Request by Wahi Hoomalu Limited Partnership for After the Fact Conservation District Use Permit (CDUP) MA-3439 for the Wailuku Country Estates Water Storage Tank with Associated Improvements and Subdivision of Land Located at Wailuku, Island of Maui, portion of TMK: (2) 3-3-002:001
*SUBMITTAL TO BE DISTRIBUTED.***

Submittal was distributed to the Board.

Sam Lemmo for Office of Conservation and Coastal Lands (OCCL) reported on background.

Tim Lui-Kwan of Carlsmith Ball representing Wahi Hoomalu LP said that the time extension of 180 days is sufficient describing more background.

Unanimously approved as submitted (Edlao, Gon)

Item L-1 Approval for Additional Funds to Construction Contract - Job No. F55C642A, Waianapanapa State Park, Water System Improvements, Hana, Maui, Hawaii

Eric Hirano, Administrator for Engineering Division, asked to amend \$450,000 to \$150,000 for additional work and under the recommendation. Also, the contractor advised to repave the road and showed some photos. An archaeological monitor is included in the proposal. Staff asked the contractor to expedite this project within 3 months starting February 2nd. If any cultural sites are encountered then money from the paving will shift over.

The Board:

Amended staff's submittal, 3rd paragraph from \$450,000.00 to \$150,000 as well as in the recommendation with the additional amendment ...”to enter into a supplemental contract to address unforeseen conditions and ...”

Unanimously approved as amended (Edlao, Johns)

- Item L-2 Approval for Award of Construction Contract - Job No. J43C032A, Land Maintenance Base Yard, Halawa, Oahu**

- Item L-3 Appointment of Waiakea Soil and Water Conservation District Director**

- Item L-4 Approval for Additional Funds to Construction Contract - Job No. B75CO71B, Replacement of Finger Piers, Waianae Small Boat Harbor, Oahu, Hawaii**

- Item L-5 Approval for Additional Funds to Construction Contract - Job No. 40-OB-A1, Boating Pump-Out Facility, Keehi Small Boat Harbor, Oahu, Hawaii**

Mr. Hirano had no changes to the above and there was no public testimony.

Unanimously approved as submitted (Schuman, Johns)

- Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer Anita Lopez, National Oceanic and Atmospheric Administration (NOAA) Ship OSCAR ELTON SETTE, for Access to State Waters to Conduct Conservation Management Activities**

Dan Polhemus, Administrator for Division of Aquatic Resources (DAR), reported on background, scientific and cultural reviews support acceptance of this application, no public comments, and DAR and Monument Management Board recommend acceptance of this application.

Marti Townsend with KAHEA distributed their standard testimony opposing fishing in the Northwest Hawaiian Islands because there are fishermen on cruise and it isn't fair to other fishermen. Require that permitted discharges into the Monument be limited. Item A was addressed as an example. Large areas of the Monument is not designated Special Preservation Area as shown on her Item C. Also, Ms. Townsend asked for better reporting and oversight in compliance with NEPA.

There was some discussion about fishing in the Monument where it's allowed for Native Hawaiians and a cultural permit is needed. The checked box only applies to federal waters and is disallowed in all state waters. All the concerns KAHEA addressed, under current law, is not allowed in state waters.

Unanimously approved as submitted (Johns, Edlao)

- Item D-2** **Consent to Assign General Lease No. S-4642, Alohilani Farms, Inc., Assignor, to Maluhia Farms LLC, Assignee, Olaa, Puna, Hawaii, TMK: (3) 1-8-06:103.**
- Item D-3** **Amend Prior Board Action of June 13, 2008 (agenda item D-2), Consent to Mortgage and Extension of Lease Term, General Lease No. S-4333, Hawaiian Fruit Flavors, Inc., Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:56.**
- Item D-4** **Set-Aside to County of Hawaii for Roadway Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-001:178 (formerly 2-4-001:168 por.)**
- Item D-5** **Set Aside to the County of Hawaii for Public Roadway Purposes, Villages of Laiopua, Phase 1, Kealakehe, Keahuolu, North Kona, Hawaii, TMK: (3) 7-4-21: Road Lots Adjacent to 12, 13 and 14.**

Mr. Atta said there were no changes. There was no public comment.

Unanimously approved as submitted (Johns, Edlao)

- Item M-1** **Issuance of a Heliport Lease Helicopter Consultants of Maui, Inc. dba Blue Hawaiian Helicopters, Lihue Airport**

Unanimously approved as submitted (Johns, Edlao)

Adjourned. (Johns, Gon)

There being no further business, Chairperson Thielen adjourned the meeting at 10:28 a.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura H. Thielen
Chairperson
Department of Land and Natural Resources